

REMARKS

Applicant has carefully studied the outstanding Office Action in the present application. The present response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Claims 1-58, 60-126 and 128-136 stand rejected under 35 U.S.C. 102(e) as being anticipated by Kern et al (U.S. 6,463,501). Claims 59 and 127 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kern in view of Dunham (U.S. 6,269,431).

Kern describes a system, method and program for maintaining data consistency among updates to data storage areas. Dunham describes a data storage system including a primary data storage subsystem and a secondary data storage subsystem.

Applicant expresses his appreciation to Examiner Christopher S. McCarthy and SPE Robert Beausoliel for the courtesy of an interview, which was granted to Applicant and Applicants' representative, Sanford T. Colb (Reg. No. 26,856). The interview was held in the USPTO on January 11, 2005. The substance of the interview is set forth in the Interview Summary.

In the interview, the patentability of claim 1 was discussed vis-à-vis the prior art of Kern et al. The Interview Summary Record states, in relevant part, "Applicant has argued that Kern does not teach the limitation of a non-ordered data send or a non-ordered data store. The examiner has argued that the limitation includes alternative and not combination language. Applicant has also argued that the order stamp consists of a time mark and a sequence mark, which differs from Kern. The applicant has agreed to amend the claim language to include the order stamp and the combination language."

Applicant has accordingly amended claim 1 to recite "an order stamp including an order mark and a time mark" and "does not require that the data be sent to said at least one data recovery device in a given order and stored on said at least one

data recovery storage device in a given order." Applicant has also amended claim 1 to include the recitation of "for storing data on said at least one data recovery storage device in a manner which enables reconstruction of a complete sequence of data communications for each of said at least one data communication monitor and enables reconstruction of a representation of said data communications at a given earlier time," which more clearly defines the present invention. Independent claim 69 has been amended to have a scope similar to the scope of claim 1.

Applicant respectfully submits that amended claims 1 and 69 include the following features each of which is not shown or suggested in the prior art:

an order mark and a time mark generated by the same device (the at least one data communication monitor),

an order mark enabling reconstruction, by the information backup and recovery server, of a complete sequence of data communications for each data communication monitor, and

a time mark enabling reconstruction of a representation of data communications at a given earlier time that does not require the data to be sent to the at least one data recovery device in a given order and stored on the at least one data recovery storage device in a given order.

Applicant has also amended independent claims 30 and 98 to include the recitation of "an order stamp including an order mark and a time mark."

Support for the amendments to the claims is found in paragraphs 75 and 97 of the application as filed, which correspond to paragraphs 77 and 99 of the application as published. None of the prior art, either alone or in combination, shows or suggests the claimed subject matter of amended claims 1, 30, 69 and 98. Claims 1, 30, 69 and 98 are therefore deemed to be allowable.

Applicant has also amended dependent claims 2-4, 8-10, 13-21, 24-26, 29, 31-33, 37-39, 42-50, 53-55, 58-60, 70-72, 76-78, 81-89, 92-94, 97, 99-101, 105-107, 110-118, 121-123 and 126-128 to provide proper antecedent basis for all elements claimed therein.

Claims 2-29 and 59-68 depend from claim 1 and recite additional patentable matter and are therefore deemed allowable. Claims 31-58 depend from claim 30 and recite additional patentable matter and are therefore deemed allowable. Claims

70-97 and 127-136 depend from claim 69 and recite additional patentable matter and are therefore deemed allowable. Claims 99-126 depend from claim 98 and recite additional patentable matter and are therefore deemed allowable.

In view of the foregoing, all of the claims are deemed to be allowable. Favorable reconsideration and allowance of the application are respectfully requested.

Respectfully submitted,

Reg No 30086

JULIAN COHEN
c/o LADAS & PARRY
26 WEST 61st STREET
NEW YORK, N. Y. 10023
Reg. No. 20302 (212) 708-1887